



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34886094

Date: NOV. 12, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a civil engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to have satisfied seven of these criteria, but the Director determined the Petitioner fulfilled only the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) and the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).¹ On appeal, the Petitioner maintains that he also meets the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), and the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix).²

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends on appeal that he meets this criterion based on his membership in the American Society of Civil Engineers (ASCE). As evidence for this criterion, he presented a certificate indicating that he was elected a Member in the ASCE. He also submitted the ASCE's bylaws stating that "[t]he standard required for admission to the Society's grade of Member means definite responsibility for engineering work of substantial importance."³ The Petitioner, however, has not demonstrated that "responsibility for engineering work of substantial importance" rises to the level of "outstanding achievements" in civil engineering. Nor has the Petitioner shown that his admission to Member was judged by recognized national or international experts in their disciplines or fields. For these reasons, the Petitioner has not established he meets this criterion.

¹ We disagree with the Director's determination that the Petitioner meets the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) and we will address this issue in our decision.

² In his appeal brief, the Petitioner does not contest the Director's findings that he did not meet the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), and therefore he has not overcome the Director's determination on these issues. We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

³ The bylaws do not elaborate on what constitutes "engineering work of substantial importance," but they identify two higher grades of membership above the Petitioner's "Member" level (Fellow and Distinguished Member). For example, the bylaws state that the grade of "Distinguished Member" is reserved for those who "have attained eminence in some branch of engineering or in the arts and sciences related thereto. Eminence is recognized superiority in position, character, and achievement through significant contributions to the profession."

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.⁴ The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.⁵ USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.⁶

As evidence for this criterion, the Petitioner submitted an article about him in *The Globee*, entitled "[The Petitioner]: [REDACTED]" but the date and author of the material were not included as required by this criterion. In addition, the Petitioner has not presented evidence showing that *The Globee* is a professional or major trade publication or other form of major media.

The Petitioner also submitted an article about him, entitled [REDACTED] [the Petitioner] - [REDACTED] [REDACTED] (2023), posted on NewsBreak.com, a news aggregation site which collects content from other media and recommends content based on a user's interests and location.⁷ The conclusion of the article states: "Connect with [the Petitioner] to delve deeper into his groundbreaking initiatives by visiting his official website at [https://www.\[REDACTED\].com](https://www.[REDACTED].com). You can also establish a direct line of communication with him through email at [REDACTED].com." The website, [www.\[REDACTED\].com](http://www.[REDACTED].com), is that of the Petitioner's employer, [REDACTED]. Marketing materials created for the purpose of promoting a person's services are not generally considered to be published material about the person (this includes seemingly objective content about the person in major print publications that the person or the person's employer paid for).⁸ Moreover, the evidence does not indicate whether the article was produced by NewsBreak.com staff or some other news outlet, as opposed to the article appearing on an open-source site through which anyone can post content.

As evidence that NewsBreak.com is a form of major media, the Petitioner initially submitted information from Similarweb.com indicating that NewsBreak.com had 22.9M "Total Visits Last 3 Months."⁹ In response to the Director's request for evidence (RFE), the Petitioner submitted updated information (June 2024) from Similarweb.com indicating that NewsBreak.com had 18.4M "Total Visits Last 3 Months." In addition, he provided Similarweb.com data for "Total Visits Last 3 Months"

⁴ See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>.

⁵ *Id.*

⁶ *Id.*

⁷ This article includes a heading on each page indicating that it received zero comments from readers.

⁸ *Id.*

⁹ The Petitioner asserted that NewsBreak is "a major media in Fort Worth, Texas" that "circulates across the United States with a wide coverage in the areas."

for TexasTribune.org (4.2M), DallasNews.com (6.06M), and TexasMontly.com (1.9M).¹⁰ The Petitioner, however, has not demonstrated that this limited comparison to only three media sources he selected is sufficient to render NewsBreak.com a form of major media. The record does not include sufficient readership data comparing NewsBreak.com to other U.S. news publications to show that NewsBreak.com rises to the level of major media.

For the above reasons, we withdraw the Director's determination that the Petitioner satisfies this regulatory criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field.¹¹ As evidence under this criterion, the Petitioner submitted recommendation letters discussing his transportation engineering projects in Texas. The Director considered this documentation but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field.

The Petitioner contends on appeal that the Director disregarded the submitted letters of recommendation, including "those that provide specific information regarding the Petitioner's original roadway design." The Petitioner's references discussed his transportation engineering projects, but their statements do not demonstrate the originality of his work and its major significance in the field.¹² As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.

Regarding the Petitioner's work on the [redacted] project, P-U-, Senior Project Manager at [redacted] stated that the Petitioner contributed to "operational improvements of numerous major grade separations to maximize mobility and safety in West Texas." P-U- further indicated that the Petitioner's "work on innovative design to enhance mobility and safety was a fundamental contribution to the state and our firm, especially in the way he advanced models which revolutionized the designs and executions of those projects," but he does not offer specific examples of how the Petitioner work on [redacted] has influenced the field of civil engineering in a major way or has otherwise been considered important at a level consistent with original contributions of major significance in the field.

With respect to the Petitioner's work [redacted] J-P-, a Project Manager at [redacted] and Past President of the ASCE [redacted] noted that the Petitioner's projects included: [redacted]
[redacted] J-P- stated that

¹⁰ This limited number of examples the Petitioner selected, however, did not include news sources such as *The Dallas Morning News*, *Fort Worth Star-Telegram*, and *Houston Chronicle* with higher levels of readership.

¹¹ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹² While we discuss a sampling of the letters of support, we have reviewed and considered each one.

“[n]ot only was [the Petitioner] just a member of a team that handled these projects, he was a key part of the projects as he handled what engineering professionals would easily regard as critical and sensitive parts of the projects.” The Petitioner, however, has not demonstrated that his original work on the aforementioned projects has affected the field in a substantial way (beyond his employer and its projects) or that his transportation project engineering work otherwise constitutes original contributions of major significance in the civil engineering field.

In addition, T-H-, Chief Executive Officer at [REDACTED], indicated that the Petitioner “made a research and development breakthrough” that has improved [REDACTED] highway design workflow. T-H- further explained:

[The Petitioner] developed an approach to assign localized geospatial coordinate data to our graphics files which created new opportunities for our team to simplify integration of client data, improve coordination of 3rd party information, and design with publicly available aerial and mapping data sets stored in dissimilar geospatial formats. [The Petitioner’s] innovation has improved our Transportation Group’s capability to accelerate project development for our clients by opening access to new sources of data that support our engineering decision making and design development approach.

While T-H- discussed the Petitioner’s impact on his company’s Transportation Group, he does not explain how the Petitioner’s method to assign localized geospatial coordinate data to [REDACTED] graphics files rises to the level of an original contribution of major significance in the civil engineering field.

Regarding the Petitioner’s work for the [REDACTED] roadway project, D-P-M-, Director of Transportation Services at [REDACTED] stated:

[The Petitioner] demonstrated his engineering innovation and expertise, developing a unique solution for the project’s new connection with the [REDACTED]
[The Petitioner] identified that inadequate driver visibility to stop safely was critical to prevent accidents and ensure smooth traffic flow for [REDACTED] new intersection location. [The Petitioner] prioritized the design revision to shift the design location for the intersection ensuring that the [REDACTED] intersection with [REDACTED]
[REDACTED] provided a safe solution

. . . .

[The Petitioner] was entrusted with the responsibility of designing the entire project. . . .
[The Petitioner] was the critical team member developing and integrating all aspects of the design, including determining the optimal roadway alignment by addressing road geometrics to managing drainage solutions, minimize ROW impacts, and limit environmental impacts. He developed 3D models of the proposed design to identify issues unique to this project and confirm the design’s intent and solutions addressed project goals and requirements. His leadership and technical skills were crucial in ensuring that the project met all federal design requirements for safety and functionality.

[The Petitioner] developed an outstanding design with several unique and original design solutions that will provide a long-term benefit to the community and State of Texas.

D-P-M-, however, does not offer specific examples of how the Petitioner's development work on the [redacted] project has influenced his field or industry to the extent that it is of major significance in the field of civil or transportation engineering. Nor has the Petitioner demonstrated that the level of attention received by his original transportation engineering design solutions signifies that he has made original contributions of major significance in the field.¹³

In this case, the recommendation letters offered by the Petitioner do not contain sufficient information and explanation, nor does the record include corroborating evidence, to show that his specific civil engineering work is viewed throughout his field, rather than by a solicited few, as having risen to the level of original contributions of major significance in the field. Courts have routinely affirmed our decisions concluding that 8 C.F.R. § 204.5(h)(3)(v) "requires substantial influence beyond one's employers, clients, or customers." *Strategati, LLC v. Sessions*, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019) (upholding an agency decision that held "[a] patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole."); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (upholding agency decision that held evidence insufficient "because it did not show widespread replication of [the petitioner's invention]"). Here, the Petitioner has not shown that his original work has affected his field at a level commensurate with contributions of major significance in the field. He therefore has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner presented his compensation table from [redacted] listing his "new salary effective September 2, 2023." His compensation table lists a "Base Salary" of \$97,500. It also includes non-guaranteed compensation such as supplemental pay (based on "hours beyond the normal 40-43-hour workweek" that are "difficult to quantify") and an annual performance bonus ("discretionary and not guaranteed"), as well as other company benefits including a phone allowance and 401k matching funds. The Petitioner's non-guaranteed compensation and company benefits from [redacted] are not part of his salary. While the regulatory language at 8 C.F.R. § 204.5(h)(3)(ix) also allows for evidence of "other significantly high remuneration for services, in relation to others in the field," the Petitioner did not provide evidence showing that his supplemental pay, bonus, and other company benefits are "significantly high" compared to other civil engineers. The Petitioner also submitted his September 2023 - December 2023 payroll statements from [redacted] showing biweekly "Regular" earnings of \$3,750 or \$97,500 yearly.¹⁴

¹³ The Petitioner's RFE response included a Texas Department of Transportation "Notice of Public Meeting" regarding the [redacted] project, but it does not mention the Petitioner or highlight the major significance of his original design and development work in the field.

¹⁴ In response to the Director's RFE, the Petitioner offered his 2023 Form W-2, Wage and Tax Statement, from [redacted] showing "Wages, tips, other compensation of \$96,394" and "Social Security wages" of \$104,078 (which likely included any bonus or overtime pay that was not part of his salary).

In addition, the Petitioner provided an April 2022 letter from [] offering him the position of “Project Engineer” with a salary of “\$105,000 per year.” He also submitted his May 2022 - July 2022 pay statements from [] indicating biweekly “Regular” earnings of \$4,038.46 or \$105,000 yearly.¹⁵

For this criterion, USCIS determines whether the person’s salary is high relative to the compensation paid to others working in the field.¹⁶ The Petitioner provided May 2022 national wage estimates from the U.S. Bureau of Labor Statistics (BLS) showing Civil Engineers in the 75th and 90th percentiles earning \$117,540 and \$138,690, respectively. According to the submitted BLS regional data, the “annual mean wage” for Civil Engineers in [] Texas was \$93,760 and in Texas it was \$93,970. In addition, the Petitioner provided “Average Transportation Engineer Salary” information from Payscale.com, “average Project Engineer - Transportation salary” data from Salary.com, and “average Transportation Project Engineer” salary information from Comparably.com.¹⁷ Regarding an “average” or “mean wage” earnings comparison, this criterion requires the Petitioner to offer evidence showing that he has commanded a “high salary or other significantly high remuneration” relative to others in the field and not just a salary that is above average in his field.

To meet this criterion, the Petitioner must present evidence showing that he has earned a high salary or other significantly high remuneration in comparison with those performing similar services in the field. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that he has commanded a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, he has not established that he fulfills this criterion.

III. CONCLUSION

The Petitioner meets the judging criterion, but he has not established he satisfies the criteria relating to awards, memberships, published material, original contributions, leading or critical role, and high salary. Because the Petitioner’s inability to meet three of the initial criteria is dispositive of his appeal,

¹⁵ In response to the Director’s RFE, the Petitioner offered his 2022 Form W-2, Wage and Tax Statement, from [] showing wages of \$21,956.

¹⁶ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

¹⁷ The Director’s decision noted that the salary information from Comparably.com, Payscale.com, and Salary.com is limited to those who reported their salaries to those websites and therefore the burden is on the Petitioner to establish the accuracy of the self-reported information. When evaluating whether a comparison between an individual’s documented remuneration and the remuneration in the survey is accurate, USCIS considers “the validity of the survey. Some websites provide user-reported salary data, which may not be a valid comparison if, for example, too few users reported their salaries or the data is otherwise not credible or reliable.” *Id.*

we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We therefore reserve this issue.¹⁸

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

¹⁸ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).